



EXPRESS MAIL NO.: EL 500 575 856 US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: JIN et al.

Serial No.: 09/161,122

Group Art Unit: 1642

Filed: September 25, 1998

Examiner: Brumback, B.

For: RECOMBINANT RSV EXPRESSION
SYSTEMS AND VACCINES

Attorney Docket No.: 7682-045-999

**PETITION TO ACCEPT UNINTENTIONALLY
DELAYED CLAIM FOR PRIORITY UNDER 37 C.F.R. § 1.78(a)(3)**

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

Pursuant to 37 C.F.R. § 1.78(a)(3), Applicants hereby petition the Commissioner to accept the unintentionally delayed claim for priority. Applicants submit an amendment under 37 C.F.R. § 1.116 concurrently herewith.

The delay in claiming priority was unintentional. In particular, inventors David Kirkwood Clarke and Peter Palese who are the only inventors on the prior application have inadvertently been omitted from the above-identified application. A request to correct inventorship under 37 C.F.R. § 1.48(a) is concurrently herewith. Applicants note that the delay in claiming priority was caused by the lack of co-inventorship between the prior application and the above-identified application. The lack of co-inventorship occurred in error as the inventors David Kirkwood Clarke and Peter Palese who are the only inventors on the prior application were inadvertently omitted from the above-identified application.

Applicants hereby submit the fee of \$1,280.00 set forth in 37 C.F.R. § 1.17(t). Please charge the required surcharge to Pennie & Edmonds LLP Deposit Account No. 16-1150. The

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Commissioner is hereby authorized to charge any deficiency of any fee, or surcharge, or other payment to Pennie & Edmonds LLP Deposit Account No. 16-1150.

The Petitioners request that the unintentionally delayed claim for priority be entered in the instant application.

Respectfully submitted,

Date: September 5, 2002

by: *Jacqueline Benn*
Laura A. Coruzzi Reg No. 43,492
Laura A. Coruzzi 30,742
(Reg. No.)
PENNIE & EDMONDS LLP
1155 Avenue of the Americas
New York, NY 10036-2711
Telephone: (212) 790-9090

Enclosures

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: JIN et al.

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SYSTEMS AND VACCINES

Attorney Docket No.: 7682-045-999

**CONSENT BY ASSIGNEE FOR CORRECTION OF
INVENTORSHIP PURSUANT TO 37 C.F.R. § 1.48(a)(5)**

Assistant Commissioner for Patents
Washington, D.C. 20231

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Sir:

MEDIMMUNE VACCINES, Inc., having an office for transaction of business at 297 North Bernardo Avenue, Mountain View, California 94043, as an assignee of right, title and interest in, to and under the invention and U.S. patent application Serial No. 09/161,122, filed September 25, 1998, entitled "RECOMBINANT RSV EXPRESSION SYSTEMS AND VACCINES", hereby consents to amendment of the application to name the following actual inventors: Hong Jin, Roderick Tang, Shengqiang Li, Martin Bryant, David Clarke, and Peter Palese.

An Assignment of the application to AVIRON, Inc. executed by Hong Jin, Roderick Tang, Shengqiang Li, and Martin Bryant was recorded with the U.S. Patent & Trademark Office on April 16, 2001, on Reel 011706 at frame 0529. Attached hereto as Exhibit 1 is a Certificate of Amendment to Amended and Restated Certificate of Incorporation certifying that the name of the corporation previously known as AVIRON, Inc. has been amended to MEDIMMUNE VACCINES, Inc.

The undersigned is empowered to act on behalf of the assignee.

I hereby declare that all statements made herein of my own knowledge are true, and that all statements made on information and belief are believed to be true; and

further, that these statements are made with the knowledge that willful false statements, and the like so made, are punishable by fine or imprisonment, or both, under Section 1001, Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Date: _____

9/3/02

Signature

Timothy R. Pearson

**Name of Signatory on behalf of
MEDIMMUNE VACCINES, Inc.**

Vice President, Treasurer & Secretary

Title of Signatory

Delaware

PAGE 1

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF OWNERSHIP OF "AVIRON", FILED IN THIS OFFICE ON THE FIFTEENTH DAY OF JANUARY, A.D. 2002, AT 4 O'CLOCK P.M.

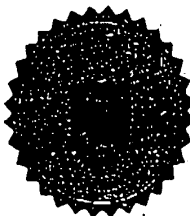
AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL REPORTS HAVE BEEN FILED TO DATE.

AND I DO HEREBY FURTHER CERTIFY THAT THE FRANCHISE TAXES HAVE BEEN PAID TO DATE.

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Harriet Smith Windsor
Harriet Smith Windsor, Secretary of State

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AUTHENTICATION: 1681841

DATE: 03-21-02

JAN-14-2002 13:21

MedImmune, Inc.

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 04:00 PM 01/15/2002
020028084 - 2600915

CERTIFICATE OF OWNERSHIP AND MERGER

OF

APPLE MERGER CORP.

WITH AND INTO

AVIRON

Under Section 253
of the Delaware General Corporation Law

Apple Merger Corp., a Delaware corporation (the "Corporation"), hereby certifies as follows:

FIRST: The Corporation was incorporated on November 29, 2001, pursuant to the Delaware General Corporation Law (the "DGCL").

SECOND: The Corporation is the owner of at least ninety percent of the outstanding shares of common stock of Aviron. The shares of common stock constitute the only outstanding shares of capital stock of Aviron.

THIRD: The following is a copy of the resolutions duly adopted as of January 15th, 2002 by the Written Consent of the Board of Directors of the Corporation with respect to the merger of the Corporation with and into Aviron:

"RESOLVED, that the Corporation be merged (the "Merger") with and into Aviron, with Aviron as the surviving corporation, on the terms and subject to the conditions set forth in the Agreement and Plan of Merger (the "Merger Agreement") dated as of December 2, 2001 among MedImmune, Inc. ("Parent"), the Corporation and Aviron, and the Merger is hereby approved; and further

RESOLVED, that at the effective time of the Merger:

1. Each issued and outstanding share of capital stock of the Corporation shall be converted into and become one validly issued, fully paid and nonassessable share of common stock of Aviron, as the surviving corporation.

2. Each share of common stock (the "Shares") of Aviron that is owned by Parent, the Corporation or Aviron shall

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MedImmune, Inc.

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automatically be canceled and retired and shall cease to exist, and no consideration shall be delivered in exchange therefor.

3. Each issued and outstanding Share (other than any shares to be canceled in accordance with 2, above, and other than Shares held by stockholders who perfect appraisal rights under Delaware law) shall be converted into the right to receive 1.075 validly issued, fully paid and nonassessable shares of common stock (the "Parent Shares") of Parent. Notwithstanding the foregoing, each holder of Shares exchanged pursuant to the Merger who would otherwise have been entitled to receive a fraction of a Parent Share (after taking into account all certificates representing Shares delivered by such holder) shall receive, in lieu thereof, cash (without interest) in an amount equal to such fractional part of a Parent Share multiplied by the closing price for a Parent Share as reported in the New York City edition of The Wall Street Journal (or, if not reported thereby, any other authoritative source) on the date prior to the date of the Merger.

FOURTH: The Merger has been approved by MedImmune, Inc., the sole stockholder of the Corporation, by written consent in lieu of a meeting pursuant to Section 228 of the DGCL.

JAN-14-2002 13:22

MedImmune, Inc.

301 527 4287 P.04/04

IN WITNESS WHEREOF, the undersigned has duly executed this
Certificate of Ownership and Merger this 15th day of January, 2002.

APPLE MERGER CORP.

By: 
Name: David M. Mott
Title: Chief Executive Officer

Delaware

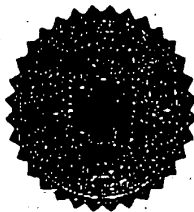
PAGE 1

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "AVIRON", FILED IN THIS OFFICE ON THE FIFTEENTH DAY OF JANUARY, A.D. 2002, AT 4:01 O'CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL REPORTS HAVE BEEN FILED TO DATE.

AND I DO HEREBY FURTHER CERTIFY THAT THE FRANCHISE TAXES HAVE BEEN PAID TO DATE.

*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State

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AUTHENTICATION: 1681842

020188822

DATE: 03-21-02

JAN 14 2002 10:19 AM FR

STATE OF DELAWARE
TO: S. STANLEY
DIVISION OF CORPORATIONS
FILED 04:01 PM 01/15/2002
020028094 - 2600915

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
AVIRON**

**Pursuant to Sections 242 and 245 of the
General Corporation Law of the State of Delaware**

Aviron, a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), hereby certifies as follows:

FIRST: The original Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on March 7, 1996 under the name Aviron Merger Corporation. The Corporation filed an Amended and Restated Certificate of Incorporation on July 16, 1996; an Amended and Restated Certificate of Incorporation on November 22, 1996; and a Certificate of Amendment of the Amended and Restated Certificate of Incorporation on July 10, 2000.

SECOND: The Amended and Restated Certificate of Incorporation has been duly adopted in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware by the director and the stockholder of the Corporation.

THIRD: The Certificate of Incorporation, as amended and restated, is hereby amended and restated to read in its entirety as follows.

ARTICLE I

The name of the Corporation is: Aviron

ARTICLE II

The address of the registered office of the Corporation in the State of Delaware is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle 19801. The name of the Corporation's registered agent at such address is The Corporation Trust Company.

ARTICLE III

The purpose for which the Corporation is organized is to engage in any lawful acts or activities for which corporations may be organized under the General Corporation Law of the State of Delaware.

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ARTICLE IV

The total number of shares of stock which the Corporation shall have authority to issue is one hundred shares of common stock, par value \$.01, per share.

ARTICLE V

Elections of directors need not be by ballot unless required by the by-laws of the Corporation. Any director may be removed from office either with or without cause at any time by the affirmative vote of the holders of a majority of the outstanding stock of the Corporation entitled to vote, given at a meeting of the stockholders called for that purpose, or by the consent of the holders of a majority of the outstanding stock of the Corporation entitled to vote, given in accordance with Section 228 of the General Corporation Law of the State of Delaware.

ARTICLE VI

In furtherance and not in limitation of the power conferred upon the Board of Directors by law, the Board of Directors shall have power to make, adopt, alter, amend and repeal from time to time the by-laws of the Corporation, subject to the right of the stockholders entitled to vote with respect thereto to alter, amend and repeal by-laws adopted by the Board of Directors.

ARTICLE VII

No director shall be liable to the Corporation or any of its stockholders for monetary damages for breach of fiduciary duty as a director, provided that the foregoing shall not eliminate or limit any liability that may exist with respect to (1) a breach of the director's duty of loyalty to the Corporation or its stockholders, (2) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (3) liability under Section 174 of the Delaware General Corporation Law or (4) a transaction from which the director derived an improper personal benefit, it being the intention of the foregoing provision to eliminate the liability of the Corporation's directors to the Corporation or its stockholders to the fullest extent permitted by Section 102(b)(7) of the Delaware General Corporation Law, as in effect on the date hereof and as such Section may be amended after the date hereof to the extent such amendment permits such liability to be further eliminated or limited. The Corporation shall indemnify to the fullest extent permitted by Section 145 of the Delaware General Corporation Law (as in effect on the date hereof and as such Section may be amended after the date hereof) each person that such Section grants the Corporation the power to indemnify.

FROM CORPORATION TRUST WILM. TEAM #4

(THU) 3:21:02 21:17:ST 15: NO. 4863796:22 P 9

JAN 14 2002 10:20 AM FR

TO 905728#669368#13 P.04

IN WITNESS WHEREOF, Aviron has caused this certificate to be executed by
its authorized officer, on this 13th day of January, 2002.

AVIRON

By:



Name: Charlene A. Friedman

Title: Vice President, General Counsel
and Secretary

Delaware

PAGE 1

The First State

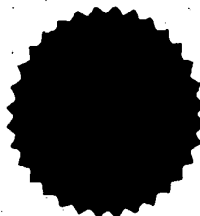
I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "AVIRON", CHANGING ITS NAME FROM "AVIRON" TO "MEDIMMUNE VACCINES, INC.", FILED IN THIS OFFICE ON THE TENTH DAY OF APRIL, A.D. 2002, AT 11 O'CLOCK A.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.

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OFFICE OF PETITIONS



Harriet Smith Windsor
Harriet Smith Windsor, Secretary of State

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AUTHENTICATION: 1712941

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DATE: 04-10-02

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PAGE 02

FROM CORPORATION TRUST 302-655-5049

(WED) 4.10.02 11:47:55 11:47/NO. 4862069309 P 3

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 11:00 AM 04/10/2002
020228732 - 2600915

AVIRON**CERTIFICATE OF AMENDMENT TO AMENDED
AND RESTATED CERTIFICATE OF INCORPORATION**

AVIRON, a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), hereby certifies as follows:

1. The Board of Directors of the Corporation, acting by the Written Consent of its Sole Director, duly adopted, pursuant to Section 242 of the General Corporation Law of the State of Delaware (the "GCL"), resolutions setting forth this proposed Amendment to the Amended and Restated Certificate of Incorporation of said Corporation and declaring said Amendment to be advisable and directing that such Amendment be presented to the sole stockholder of the Corporation for consideration and approval;

2. The stockholder of the Corporation, acting by the Written Consent of its Sole Stockholder, approved and adopted this proposed Amendment to the Restated Certificate of Incorporation of said Corporation in accordance with Section 242 of the GCL;

3. Article 1 of the Amended and Restated Certificate of Incorporation of the Corporation, dated January 15, 2002, is hereby amended to read in full as follows:

"The name of the Corporation is: MediImmune Vaccines, Inc."

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FROM CORPORATION TRUST 302-655-5049

(WED) 4.10.02 11:47 11:47/NO. 4862069309 P 4

IN WITNESS WHEREOF, AVIRON has caused this Certificate to be signed by
David M. Mott, Chief Executive Officer, this day 8 of April 2002.

AVIRON

By: 

David M. Mott
Chief Executive Officer

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